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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

NO. _____

HELEN JACKSON

versus

LYKES BROS. STEAMSHIP CO., INC.

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF LOUISIANA

Helen Jackson, the petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered in the above-entitled case on June 21, 1966.

CITATIONS TO OPINIONS BELOW

The opinion of the Judge of the Civil District Court, Parish of Orleans, printed in Appendix D was unreported. The opinion of the Fourth Circuit Court of Appeal, State of Louisiana, printed in Appendix C hereto, is reported at 185 So 2d 342. The opinion of the same Fourth Circuit Court of Appeal, denying a rehearing, printed in Appendix B hereto, is

not reported. The opinion of the Supreme Court of Louisiana denying a writ of certiorari printed in Appendix A hereto, is reported in 187 So 2d 441.

JURISDICTION

The judgment of the Supreme Court of Louisiana denying a writ of certiorari, or writ of review, to the Court of Appeal, Fourth Circuit of the State of Louisiana, was denied on June 21, 1966, printed in Appendix A hereto. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

(1) Whether there can be in rem liability of a vessel to a seaman/longshoreman when there is no in personam liability of the shipowner/operator of the vessel, for breach of the warranty of seaworthiness.

(2) Is the right of trial by jury guaranteed by the Jones Act (46 U.S.C. 688) and the Seventh Amendment of the United States Constitution waived in a State Court forum?

STATUTES INVOLVED

(1) Sections (33 U.S.C. 902, 903 and 905) of the Longshoremen's and Harbor Workers' Compensation Act. They are printed in Appendix E.

(2) The Jones Act (46 U.S.C. 688). It is printed in Appendix F.

(3) The Seventh Amendment of the the United States Constitution.

(4) The warranty of seaworthiness pursuant to General Maritime Law.

STATEMENT OF THE CASE

On February 19, 1964, Luther Jackson, while employed as a longshoreman, was subjected to fumes and vapors of an insecticide escaping in the hold of a vessel owned and operated by Lykes Bros. Steamship Co., Inc. And as a result of the same, Luther Jackson died. (R. 49-51) In the instant cause, Lykes Bros. Steamship Co., Inc. acted simultaneously in the dual capacity of ship operator and stevedore, operating the vessel and directly employing the decedent. (R. 49-51). On January 6, 1965, the widow of the decedent filed suit in the Civil District Court for the Parish of Orleans, State of Louisiana, seeking remedy under the Jones Act (46 U.S.C. 688) or in the alternative pursuant to General Maritime Law, praying for trial by jury. (R. 49-51) In response, the shipowner filed exceptions of no cause of action and no right of action alleging that the Longshoremen's and Harbor Workers' Act provided exclusive remedy, if there was any remedy, for the widow of the decedent. (R. 44-47) On October 1, 1965, the Civil District Court for the Parish of Orleans, ignoring the holding of Reed v. Yaka, (1963) 373 U.S. 410, 83 S Ct 1349, and additionally ignoring the provisions of the Jones Act, maintained the exceptions of the shipowner, dismissing the action of the petitioner, which opinion is

printed in Appendix D hereto. (R. 36) On April 4, 1966, the Fourth Circuit Court of Appeal for the State of Louisiana affirmed the decision of the lower court, alleging that the petitioner only had an in rem remedy in a non state forum and had no in personam remedy against the shipowner in any forum, which opinion is printed in Appendix C hereto. (R. 17-23) On May 2, 1966, an application for rehearing was refused by the Fourth Circuit Court of Appeal for the State of Louisiana (R. 13). And on June 21, 1966, the Supreme Court of Louisiana denied an application for a writ of certiorari, finding no error of law in the prior judgment, which opinion is printed in Appendix A hereto.

REASONS FOR GRANTING WRIT

1. The decision of the court below in the instant case -- like the Court's decision in Robinson v. Lykes Bros. Steamship Co., Inc. (1965) 247 La 481, 172 So 2d 292 -- is erroneous and in direct conflict with the holding of Reed v. Yaka (1963) 373 U.S. 410, 83 S Ct 1349. In Reed v. Yaka, supra, abandoning the literal reading of the "exclusive clause" of 33 U.S.C. 905 of the Longshoremen's and Harbor Workers' Compensation Act, the U. S. Supreme Court explicitly held that a longshoreman could seek remedy against a shipowner pursuant to General Maritime Law, for the breach of warranty of seaworthiness, notwithstanding that the shipowner was the direct employer of the longshoreman. However, in the instant case

and in the Robinson case, supra, the Supreme Court of Louisiana refuses to follow the same.

Contrary and in opposition to the same, Reed v. Yaka, the Supreme Court of Louisiana and its lower courts hold that a longshoreman does not have a cause of action in personam against the shipowner. This lack of harmony between the State Court holdings and that of Reed v. Yaka are best illustrated in the appellate opinion of the instant case, 185 So 2d 342, 345, also printed in Appendix C hereto:

> ...
>
> An analysis of the Yaka case reveals language which suggests that an in personam remedy may be available; the analysis likewise reveals that there exists reason for believing that the section of the Longshoremen's and Harbor Workers' Act referred to hereinabove has been taken upon the judicial anvil and hammered into an unexpected shape.
>
> In any event, we are of the opinion that it exemplifies more judicial integrity to conclude that the rationale emanating from Yaka merely permits a longshoreman to bring an action in rem against his employer in the federal court. (Emphasis ours)

Thus, the Supreme Court of Louisiana has twice held in Robinson and the instant case

that there can be in rem liability of a vessel where there is no corresponding in personam liability of the shipowner/operator. This is erroneous and contra to Reed v. Yaka, supra, and Guzman v. Pichirilo (1962) 369 U.S. 698, 82 S Ct. 1095.

2. In deciding the instant case, as well as Robinson v. Lykes Bros. Steamship Co., Inc. (1965) 247 La., 481, 172 So 2d 292, the district, appellate and highest court of Louisiana relied heavily on decisions in Stepter v. T. Smith & Son, Inc. (1961) 241 La. 465, 129 So 2d 740 and Ellis v. Travelers Ins. Co. (1961) 241 La. 433, 129 So 2d 729, both of which involved longshoremen suing non shipowner employers for benefits under the Louisiana Workmen's Compensation Act. However, the issues as presented in Ellis and Stepter are grossly distinguishable in the following:

(a) Ellis and Stepter were longshoremen suing stevedore employers for state compensation benefits;

(b) The stevedore employers of Ellis and Stepter did not own or operate the vessels involved;

(c) No issue of the warranty of seaworthiness or the Jones Act were involved in the remedy sought by Ellis and Stepter;

(d) The claims for state compensation

benefits by Ellis and Stepter came subsequent to a federal award and payment of federal benefits under the federal act.

(e) No monies of any kind have been paid to the widow of Luther Jackson.

It is submitted that the aforementioned Stepter and Ellis cases have a rightful place in the history of the "twilight doctrine" with cases such as Southern Pacific Co. v. Jensen, (1917) 244 U.S. 205, 37 S Ct 524 and Davis v. Department of Labor (1942) 317 U.S. 249, 63 S Ct 225. However, the same Stepter and Ellis cases are inapplicable herein, to the instant case, as to the issue of whether or not the widow of the decedent longshoreman has a cause of action against the shipowner for the breach of the warranty of seaworthiness.

3. The courts of Louisiana assumed without testimony, affidavit or any type of evidence that the decedent, as a matter of law, was not and could not be a member of the crew. In spite of the provisions of the Jones Act and the Seventh Amendment, guaranteeing the petitioner a trial by jury, as prayed, the issue of whether or not the decedent was a member of the crew, entitling his widow to seek remedy pursuant to the Jones Act was decided summarily by judge, and in the instance of the district court judge, on the basis of Stepter v. T. Smith & Son, Inc. (1961) 241 La 433, 129 So 2d 740, and Ellis v. Travelers Ins. Co.

(1961) 241 La 433, 129 So 2d 727. And it is unknown as to what prompted the Fourth Circuit Court of Appeal and the Supreme Court of Louisiana to confirm the district court, as no verbal or written opinions were given, except that during verbal argument, the Appellate Court reminded counsel for the petitioner that any Appellate Court of the State of Louisiana by state statute (Louisiana Code of Civil Procedure, Article 2082, printed in Appendix G hereto) could reverse any opinion rendered by any civil jury. And apparently, since the petitioner's cause of action has been dismissed, the judgment of the Appellate and Supreme Court of Louisiana apparently represents a holding that even if some evidence had been submitted to make a determination and even if the jury had found, as a matter of fact, that the decedent was a member of the crew, then the Appellate Court would automatically reverse the decision.

The petitioner submits the holding of the Supreme Court of Louisiana and its lower State courts is contra to the Jones Act (46 U. S. C. 688) and a history of U. S. Supreme Court cases on this same point.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES R. MALONEY
Attorney for the Petitioner
816 Richards Building
New Orleans, Louisiana 70112
Telephone: 522-9039

PROOF OF SERVICE

I, Charles R. Maloney, attorney for the petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day, I served copies of the foregoing Petition for Writ of Certiorari on Mr. Edward Merritt, Counsel for Respondent by mailing a copy thereof, postage prepaid, addressed to his office at 825 Whitney Bank Building, New Orleans, Louisiana 70130.

Dated this_____day of September, 1966.

CHARLES R. MALONEY

APPENDIX (A)

SUPREME COURT OF LOUISIANA

New Orleans, 70112

No. 48,229 June 21, 1966

Helen Jackson

v.

Lykes Bros. Steamship Co., Inc.

In re: Helen Jackson applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans

---

Writ refused. We find no error of law in the judgment of the Court of Appeal.

/s/ WBH
/s/ JBF
/s/ JBH
/s/ FWH
/s/ EHMcC

SANDERS, J., and SUMMERS, J., are of the opinion that a writ should be granted. See Robinson v. Lykes Bros. 247 La. 481, 172 So. 2d 292.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
June 21, 1966

/s/ Harold A. Moise, Jr.
Deputy Clerk

****

APPENDIX (B)

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

Clerk's Office, New Orleans, May 2, 1966

Dear Sir:

Rehearing was this day refused in the case entitled: JACKSON v. LYKES BROS. STEAMSHIP CO., INC.

No. 2155

Very truly yours,

M. J. Keenan; Clerk

APPENDIX (C)

Helen Jackson	*	No. 2155
	*	Court of Appeal
v.	*	
	*	Fourth Circuit
Lykes Bros. Steamship Co., Inc.	*	State of Louisiana
	*	

* * * * * * *

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, DIVISION "A", NO. 431-099, HON. OLIVER P. CARRIERE, JUDGE

* * * *

GODFREY Z. REGAN

Apr. 4, 1966 JUDGE

(Court composed of Judges Godfrey Z. Regan, Louis H. Yarrut, and Luther E. Hall.)

CHARLES R. MALONEY
For Plaintiff-Appellant

TERRIBERRY, RAULT, CARROLL,
YANCEY & FARRELL,
WILLIAM E. WRIGHT
G. EDWARD MERRITT,
For Defendant-Appellee

AFFIRMED

The plaintiff, Helen Jackson, filed this suit against the defendant, Lykes Bros. Steamship Company, Inc., endeavoring to recover the sum of $75,000.00 representing damages incurred by her as a result of the death of her husband from the inhalation of noxious gases, which she asserts was caused by the negligence of the defendant or the unseaworthiness of its steamship, upon which her husband was employed as a longshoreman.

The plaintiff requests relief under the Jones Act, [1] the Louisiana Workmen's Compensation Act, [2] the Longshoremen's and Harbor Workers' Compensation Act, [3] the Louisiana Civil Code, [4] and the general maritime law.

The defendant in response to the foregoing suit pleaded the exceptions of no right or cause of action predicated on the rationale (1) that the Jones Act provides a remedy only for seamen who are either masters or members of the crew, and not for longshoremen; that (2) the Louisiana Workmen's Compensation Act does not apply to a longshoreman injured or killed aboard a vessel in navigable waters; that (3) since the Longshoremen's and Harbor Workers' Act provides the exclusive remedy in this situation, the plaintiff possessed no cause of action under the Louisiana Civil Code;

1. 46 U.S.C. Section 688.
2. R.S. 23:1021, et seq.
3. 33 U.S.C. Section 901
4. Arts. 667, 670, 2315, 2317, 2320, 2322

and that (4) there exists no cause of action for wrongful death under the general maritime law.

In addition thereto, the defendant filed an exception to the jurisdiction of the court rationae materiae insisting that the Louisiana courts possess no jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act.

From a judgment of the lower court sustaining all of the defendant's exceptions and dismissing the plaintiff's suit, she has prosecuted this appeal.

The record reveals that the plaintiff asserted in her petition that her husband was killed as the result of the inhalation of noxious fumes or gases while in the course and scope of his employment as a longshoreman aboard the defendant's steamship. The ship was moored in the Mississippi River when the accident occurred, so that there exists no dispute as to the fact that he was working aboard in navigable waters.

Therefore, the only question posed for this court's consideration is whether the plaintiff's exclusive remedy emanates from the Longshoremen's and Harbor Workers' Act, or whether she may litigate in the state courts under the Jones Act, the general maritime law, the Louisiana Civil Code, or the Louisiana Workmen's Compensation Act.

The answer to the foregoing question

is contained in 33 U.S.C., Section 905, which provides that the Longshoremen's and Harbor Workers' Act is the exclusive remedy where it is applicable. This section reads:

> "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. . . ."

Since the injury complained of was sustained by a longshoreman aboard a vessel located in navigable waters, the Longshoremen's Act is applicable to the exclusion of any remedies for wrongful death afforded by the Louisiana Civil Code.[5]

In view of the exclusiveness of the remedy under the Longshoremen's and Harbor Workers' Act, it has been settled that this act and the Louisiana Workmen's Compensation Act are mutually exclusive. However, situations have often arisen wherein it was difficult, if not impossible, to determine whether a particular injury was within the purview of the Louisiana Workmen's Compensation Act or the

5. 33 U.S.C., Section 903.

Longshoremen's and Harbor Workers' Act. In order to ease the burden on a compensation claimant in making his choice of remedies, the courts carved out an exception known as the "twilight zone" doctrine by virtue of which the injured party possessed a choice of either the federal or state compensation remedy when the location of the accident could reasonably have conferred jurisdiction upon the state courts or the federal administrative agencies. However, in this case it is clear that the longshoreman involved was fatally injured while working on navigable waters, and the above statute emphatically reveals that the Longshoremen's and Harbor Workers' Act is applicable to the facts hereof.[6]

The plaintiff's argument as to the applicability of the Jones Act and the general maritime law to the death of her husband is predicated primarily upon the rationale emanating from the case of Reed v. Steamship Yaka,[7] which concluded that the section of the Longshoremen's and Harbor Workers' Act quoted above making that act the exclusive remedy of a longshoreman injured aboard a vessel in navigable waters did not preclude an action by an employee against his employer for injuries sustained aboard a vessel owned by the employer. This case involved a suit under the

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6. Stepter v. T. Smith & Son, Inc., 241 La. 465, 129 So. 2d 740 (1961); Ellis v. Travelers Ins. Co., 241 La. 433, 129 So. 2d 729 (1961).
7. 373 U. S. 410, 83 Sup. Ct. 1349 (1963).

general maritime law, predicated upon the shipowner's warranty of a seaworthy vessel.

The plaintiff argues, in effect, that the Yaka decision emasculated and rendered of no effect the exclusive remedy provision of the Longshoremen's and Harbor Workers' Act. Thus counsel for plaintiff reasons that since this section is no longer in force, a person injured as a longshoreman employed by a shipowner may pursue his remedy under the Jones Act.

Our analysis of the Yaka case, however, does not support the plaintiff's contention. It is authority only for the proposition that an injured longshoreman may bring an admiralty libel under the general maritime law for injuries sustained by him aboard his employer's vessel. It does not afford a longshoreman Jones Act coverage.[8]

Finally, the plaintiff insists that she has a right to proceed against the defendant under the general maritime law. The general maritime law does not, as a rule, provide a cause of action for wrongful death.[9] However, in certain cases the Admiralty Court will look to the wrongful death statute of the state in which

8. See Aycock v. Lykes Brothers Steamship Co., Inc., 236 F. Supp. 360 (D. C. Tex. 1964).

9. Cortes v. Baltimore Insular Line, Inc. 287 U.S. 367 (1932).

it sits and apply that statute to the facts posed by the particular case.

In any event, the plaintiff contends that the rationale emanating from the case of Reed v. Yaka[10] affords a remedy directly, or in personam, against the defendant for the death of her husband. In response to this argument, the defendant points to Robinson v. Lykes Brothers Steamship Co., Inc.,[11] wherein this court concluded that the exclusive remedy provision of the Longshoremen's and Harbor Workers' Act precludes an in personam action against the employer. In that case this court construed the Yaka decision as permitting merely an in rem action against the vessel owned by the employer. Counsel for the defendant asserts that such an interpretation preserves the integrity of the Longshoremen's and Harbor Workers' Act remedy and also lends the proper effect to the ratio of the Yaka case.

An analysis of the Yaka case reveals language[12] which suggests that an in personam

---

10. Supra.
11. 170 So. 2d 243 (1964).
12. "We find it unnecessary to decide whether a ship may ever be held liable for its unseaworthiness where no personal liability could be asserted because, in our view, the Court of Appeals erred in holding that Pan-Atlantic could not be held personally liable for the unseaworthiness of the ship which caused petitioner's injury."

remedy may be available; the analysis likewise reveals that there exists reason for believing that the section of the Longshoremen's and Harbor Workers' Act referred to hereinabove has been taken upon the judicial anvil and hammered into an unexpected shape.

In any event, we are of the opinion that it exemplifies more judicial integrity to conclude that the rationale emanating from Yaka merely permits a longshoreman to bring an action in rem against his employer in the federal court.

For the foregoing reasons, the judgment of the lower court is affirmed.

The plaintiff is to pay all costs of this proceeding.

AFFIRMED

APPENDIX (D)

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

HELEN JACKSON NO. 431-099

VS. DIVISION "H"

LYKES BROS. STEAMSHIP CO., INC. DOCKET 4

JUDGMENT

The exceptions herein filed on July 8, 1965, by Lykes Bros. Steamship Co., Inc., came on this day for hearing.

PRESENT: CHARLES R. MALONEY,
Attorney for plaintiff.
G. EDWARD MERRITT,
Attorney for exceptor.

When, after hearing the pleadings, and argument of counsel, and for the reasons orally assigned;

IT IS ORDERED that the exceptions of no right or cause of action; jurisdiction; and that plaintiff is not the proper party to bring the action, and has no right or cause of action, be and the same are hereby maintained, and plaintiff's suit be dismissed, at plaintiff's costs.

JUDGMENT READ, RENDERED AND SIGNED IN OPEN COURT ON OCTOBER 1st, 1965.

/s/ Oliver P. Carriere
JUDGE

APPENDIX (E)

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

33 USC, 902

SECTION 2. When used in this Act --

...

(3) The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

...

33 USC, 903

SECTION 3(a). Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of --

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

...

33 USC, 905

SECTION 5. The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, dependents, parents, next of kin and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death . . .

APPENDIX (F)

JONES ACT

46 USC, 688 - Section 4

SECTION 688. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the

case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, Section 20, 38 Stat. 1185; June 5, 1920, c. 250, Section 33, 41 Stat. 1007.

APPENDIX (G)

ARTICLE 2082 - LOUISIANA CODE OF CIVIL PROCEDURE

ARTICLE 2082

DEFINITION OF APPEAL - Appeal is the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court.